IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22-10-2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRIMINAL REVISION Nos.796 and 805 of 2004

Dhanam ..Petitioner in both the revisions

-vs-

State by
1. The Sub Inspector of Police
Aylpatti Police Station
Aylpatti, Rasipuram
Namakkal District
(Cr.No.182/2001 and 181/2001 respectively)
2. Thangavel
3. Kalavathy
4. Palaniappa Gounder .. Respondents in both the revisions

These revisions are filed against the Judgment made in C.C.Nos.86 of 2003 and 85 of 2003 respectively dated 27.1.2004 on the file of the Judicial Magistrate,Rasipuram, Namakkal Disitrict.

For petitioner : Mr.S.Lakshmanasamy
For respondents : Mr.A.Saravanan,
Government Advocate
(Crl.side)-R1
Ms.Jayashree Baskar-RR2 to 4

C O M M O N O R D E R

The complainant and the accused in both the cases are one and the same. The complainant in C.C.No.86 of 2003 on the file of the Judicial Magistrate, Rasipuram, Namakkal Districit is the revision petitioner in Crl.R.C.No.796 of 2004. The complainant in C.C.No.85 of 2003 who is also the complainant in C.C.No.86 of 2003 on the file of the Judicial Magistrate, Rasipuram, Namakkal District is the revision petitioner in Crl.R.C.No.805 of 2004.

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2. On the basis of Ex P1 complaint dated 14.11.2001 in C.C.No.85 of 2003, P.W.9 the Sub Inspector of Police had registered a case against the accused under Sections 447,448,379,380,453,454, 506 (2) of IPC for having committed theft of 7 ½ H.P.electric motor compressor, starter, switch from the garden well worth of Rs.35,000/- and also committed a theft of BPL TV,Dish Antenna, wall clock, Bureau, and a cot worth of Rs.15,000/-. On the basis of ExP1 complaint dated 15.11.2001 in C.C.No.85 of 2003, P.W.6 Sub Inspector of Police, had registered a case against the same accused under Sections 448,454,380 of IPC for having criminally trespassed into the finance office conducted by the complainant as a partner in the name and style of "Saraswathy Finance " and committed a theft of Bureau, Table, Chair and fan to the value of Rs.10,000/- besides records pertaining to the said Finance Company to the value of Rs.6,00,000/-.

3. The learned Judicial Magistrate, after taking cognizance of the offence had taken both the cases on file and on appearance of the accused on summons furnished copies under Section 207 of Cr.P.C. and when the charges were explained to the accused in both the cases, and when questioned the accused, pleaded not guilty.

4. On the side of the prosecution, P.Ws 1 to 9 were examinend and Exs P1 to P3 were marked in C.C.No.85 of 2003 and P.Ws 1 to 6 were examinend and Exs P1 to P3 were examined on the side of the prosecution in C.C.No.86 of 2003.

5. P.W4,P.W.6 to P.W.8 in C.C.No.85 of 2003 and P.W.3 to P.W.5 in C.C.No.86 of 2003 have not supported the case of the prosecution . Hence they were treated as hostile witnesses by the learned Assistant Public Prosecutor.

6. P.W.5 in C.C.No.85 of 2003 is not an occurrence witness. P.W.1 and P.W.2 are the husband and wife. Basing on the discrepancy in the evidence of P.W.1 and P.W.2, and also for want of evidence to fasten the criminal liability under Sections 447,448,379,380,454, and 506(2) of IPC against the accusued in C.C.No.85 of 2003 and for want of evidence in C.C.No.86 of 2003 to fasten the criminal liability under Sections 448,454,380 of IPC against the accused in C.C.No.86 of 2003,the learned Judicial Magistrate has acquitted the accused from all the charges levelled against them in both the cases. Aggrieved by the findings of the learned trial Judge, P.W.1 in both the cases have preferred these revision petitions.

7. Heard Mr. S.Lakshmanasamy,learned counsel appearing for the revision petitioner(in both cases) and Mr.A.Saravanan, learned Government Advocate(Criminal Side) for R1(in both the cases) and Ms.Jayashree Baskar, learned counsel appearing for the respoondents 2 to 4 and considered their respective submissions.

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8. Both the revisions are against the Judgment of acquittal. It is in evidence that both the complainant/revision petitioner and the accused in both the cases are having previous enmity and that there are civil and criminal cases pending between them. Except, the testimony of P.W.1 and P.W.2 in both the cases, who were none other than the husband and wife, there is absolutely no iota of evidence to bring home the guilt of the accused in both the cases under the respective charges levelled against them. Admittedly, there is no recovery of stolen articles from the accused. In C.C.No.86 of 2003, according to the prosecution, the accused have committed theft of records from the Saraswathy finance Company run by the second accused as one of the partners. Under such circumstances, the learned trial Judge has come to a correct conclusion that the second accused is also the owner of the property said to have been stolen away from the Saraswathy Finance Company.

9. It is in evidence that P.W.1 is not the partner of Saraswathy Finance company. Further the complainant has not given any details regarding the documents worth of Rs.6,00,000/- said to have been stolen away from the said finance company.

10. The compressor motors, starter, switch, and T.V. Dish antenna, Bureau and cot are the subject matter of C.C.No.85 of 2003. Admittedly, both P.W.1 and P.W.2 are not the eye witnesses to the occurrence in C.C.No.85 of 2003. No recovery has been made from the accused in C.C.No.85 of 2003. All the independent witnesses in both the cases have not supported the case of the prosecution. Only under such circumstances, the learned trial Judge has come to an unassailable conclusion that the prosecution has failed to prove the guilt of the accused beyond any reasonable doubt and accordingly acquitted the accused in both the Cases. Under such circumstances, I do not find any material to interfere with the findings of the learned trial Juduge in both the cases.

11. In the result,Crl.R.C.No.796 of 2004 and Crl.R.C.No.805 of 2004 are dismissed confirming the Judgement in C.C.Nos. 86 of 2003 and 85 of 2003 respectively on the file of the Court of Judicial Magistrate, Rasipuram, Namakkal District.

sg

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Judicial Magistrate, Rasipuram, Namakkal District

2.-do-through the Chief Judicial Magistrate, Namakkal

3. The Sub Inspector of Police, Aylpatti Police Station,Aylpatti.

4. The Public Prosecutor, High Court, Madras

AKR(CO)
dcp/26.10 Crl.R.C.Nos.796 & 805 of 2004

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